WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

**OPEN MEETING ITEM**

BRIAN C McNEIL
EXECUTIVE SECRETARY

ARIZONA CORPORATION COMMISSION

DATE: JANUARY 17,200 1

DOCKET NO.: RE-00000C-00-0377

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Jane Rodda. The recommendation has been filed in the form of an Opinion and Order on:

ENVIRONMENTAL PORTFOLIO STANDARD
(RULEMAKING)

Pursuant to A.A.C. R14-3-1 10(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

JANUARY 26, 2001

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

JANUARY 30,200 1 and JANUARY 3 1, 2001

For more information, you may contact Docket Control at (602) 542-3477 or the Heating Division at (602) 542-4250.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

**BEFORE THE ARIZONA CORPORATION COMMISSION**

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

| | |
|---|---|
| IN THE MATTER OF THE NOTICE OF PROPOSED RULEMAKING FOR THE ENVIRONMENTAL PORTFOLIO STANDARD. | DOCKET NO. RE-00000C-00-0377<br><br>DECISION NO. ______________<br><br>**OPINION AND ORDER** |

| | |
|---|---|
| DATE OF HEARING: | November 9, 2000 |
| PLACE OF HEARING: | Phoenix, Arizona |
| ADMINISTRATIVE LAW JUDGES: | Jane Rodda and Jerry L. Rudibaugh |
| APPEARANCES: | Michael Grant, GALLAGHER & KENNEDY, on behalf of Arizona Electric Power Cooperative, Inc.;<br><br>Thomas Mumaw, SNELL & WILMER, on behalf of Arizona Public Service;<br><br>Webb Crockett, FENNEMORE CRAIG, on behalf of Phelps Dodge, ASARCO and Arizonans for Electric Choice and Competition;<br><br>Robert Annan, on behalf of the Arizona Clean Energy Industries Alliance;<br><br>Tom Hansen, Tucson Electric Power Company;<br><br>Paul Michaud, Martinez & Curtis, on behalf of York Research and Arizona Clean Energy Industries Alliance;<br><br>Rick Gillian, Land and Water Fund of the Rockies, the Grand Canyon Trust, the Grand Canyon Chapter of the Sierra Club, the Arizona Consumers Council;<br><br>Janice Alward, Staff Attorney, Legal Division, on behalf of the Arizona Corporation Commission Utilities Division. |

**BY THE COMMISSION:**

On April 20, 1999, the Arizona Corporation Commission ("Commission") Staff ("Staff") opened Docket No. E-0000A-99-0205 in the Matter of the Generic Investigation of the Development of A Renewable Portfolio Standard As A Potential Part of the Retail Electric Competition Rules. The

Commission accepted testimony and conducted hearings.

On May 4, 2000, in Decision No. 62506, the Commission adopted an Environmental Portfolio Standard ("EPS") and ordered Staff to commence a rulemaking process to adopt rules consistent with the EPS.

On May 31, 2000, Staff opened the rule-making docket. On August 1, 2000, in Decision No. 62762, the Commission ordered Staff to forward the rules entitled "Environmental Portfolio Standard", to be numbered as A.A.C. R14-2-1618, to the Secretary of State for Notice of Proposed Rulemaking ("EPS Rule").

The EPS Rule was published in the Arizona Administrative Register on August 25, 2000. Pursuant to Procedural Order dated August 9, 2000, a public comment hearing was scheduled for November 9, 2000, and interested parties were requested to file written comments on or before October 5, 2000, and Reply comments on or before October 24, 2000. Staff conducted a workshop on the proposed EPS on August 29, 2000.

The following entities filed comments on the EPS Rule: Tucson Electric Power Company ("TEP"); the Land and Water Fund of the Rockies, the Grand Canyon Trust, the Arizona Consumers Council, and the Grand Canyon Chapter of the Sierra Club (collectively the "Environmental Group"); the Residential Utility Consumer Office ("RUCO"); the Arizona Electric Power Cooperative, Inc. ("AEPCO"); the Arizona Clean Energy Industries Alliance and York Research, Inc. (the "Solar and Renewable Energy Industries"); New West Energy ("NWE"); the City of Scottsdale ("Scottsdale"); Citizens Communications Company ("Citizens") and Staff. TEP, Staff, the Environmental Group and Arizona Public Service Company ("APS") filed Reply comments. The Public comment hearing took place on November 9, 2000, as scheduled.

The proposed EPS Rule provides that on its effective date, any Load-Serving Entity selling electricity or aggregating customers for the purpose of selling electricity must derive at least 0.2 percent of the total retail energy sold from new solar resources or environmentally-friendly renewable electric technologies. The EPS Rule provides that solar resources include photovoltaic resources and solar thermal resources that generate electricity.

Electric Service Providers that are not Utility Distribution Companies ("UDC's") are exempt until 2004, but could voluntarily participate.

UDCs would recover part of the costs of the portfolio standard through current System Benefits Charges, if they exist, including a re-allocation of demand side management funding to portfolio uses. Additional portfolio standard costs will be recovered by a customer environmental portfolio surcharge of $.000875 per kWh on the customer's monthly bill. There is a surcharge cap of $.35 per month for residential customers, and $13 per month per meter or per service for all non-residential customers, except for those using 3000 kW or more per month who will be subject to a cap of $39 per month.

The portfolio percentage increases on January 1 of each year after 2001, so that by 2012, Load-Serving Entities must derive 1.2 percent of their total retail sales from qualifying sources. A Load-Serving Entity is entitled to meet the portfolio requirement with electricity produced in Arizona by environmentally-friendly renewable electricity technologies that are defined as in-state landfill gas generators, wind generators and biomass generators.

The EPS Rule provides that the Commission would continue the annual increase in portfolio percentage after December 31, 2004, only if the cost of environmental portfolio electricity has declined to a Commission–approved cost/benefit point.

Load-Serving Entities are eligible for a number of extra credit multipliers that may be used to meet the portfolio standard requirements. New solar electric systems installed and operating prior to December 31, 2003 qualify for multiple extra credits for kWh produced for 5 years following start-up. The extra credit varies depending on the year in which the system started up. There is a Solar Economic Development Extra Credit Multiplier for in-state power plant installation and in-state manufacturing and installation, and a Distributed Solar Electric Generation and Solar Incentive Program multiplier.

Beginning January 1, 2004, the Commission may impose a deficiency payment of 30¢ per kWh to the Solar Electric Fund for deficiencies in the provision of solar electricity. The Solar Electric Fund will be utilized to purchase solar electric generators or solar electricity in the following calendar year for the use by public entities in Arizona, such as schools, cities, counties or state agencies.

One of the major concerns of the parties was that the EPS surcharge may not be sufficient for some Load-Serving Entities to meet their mandated renewable percentage under the ESP Rule, and as a result rate-payers may be faced with large deferred costs that the utilities might incur in meeting the mandate. A.A.C. R14-2-1618.B.2 requires Staff to establish, no later than January 1, 2003, an Environmental Portfolio Cost Evaluation Working Group to study the costs and benefits of the EPS. This Working Group will present its recommendations to the Commission whether in 2005 and after, the portfolio percentage should increase as currently scheduled. The deficiency payments under the Rule do not start until after the Commission has considered the recommendations of the Working Group. The Hearing Division has recommended replacing “shall” with “may” and inserting “no earlier than” before “January 1, 2004” in R14-2-1618.F to clarify that the deficiency payments may start as early as January 1, 2004, but do not have to start as of January 1, 2004, depending on when and how the Commission acts on the Working Group’s recommendations.

Neither the Load-Serving Entities affected by the Rule nor the Commission will know the true cost of the ESP for several years, which is why the EPS Rule incorporates the “off ramp” provision of R14-2-1618.B.2. It is the intent of this Rule that the surcharge will cover the cost of the mandate. It is not the Commission’s intent that the ratepayers of Arizona pay the surcharge and also be faced with high deferred costs if it turns out the surcharge is not sufficient to allow an utility that is taking prudent measures to meet the portfolio percentage. However, neither do we wish to encourage utilities to ignore their obligation under the EPS Rule to meet the required percentages. The Commission will re-examine the required percentages, appropriate surcharge and the amount of the deficiency payment in 2003 based on actual experience.

After consideration of the filed written comments and oral comments received in the public comment hearings, the Hearing Division recommends modifications of the EPS Rule as set forth in Appendix A (“Proposed Modifications”). The Proposed Modifications are not substantive, but rather clarify the intent and parts of the EPS Rule.

* * * * * * * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

## FINDINGS OF FACT

1. On April 20, 1999, Staff opened Docket No. E-0000A-99-0205 in the Matter of the Generic Investigation of the Development of A Renewable Portfolio Standard As A Potential Part of the Retail Electric Competition Rules. The Commission accepted testimony and conducted hearings.

2. On May 4, 2000, in Decision No. 62506, the Commission adopted an Environmental Portfolio Standard and ordered Staff to commence a rulemaking process to adopt rules consistent with the EPS.

3. On May 31, 2000, Staff opened the rule-making docket. On August 1, 2000, in Decision No. 62762, the Commission ordered Staff to forward the rules entitled the Environmental Portfolio Standard, to be numbered as A.A.C. R14-2-1618 to the Secretary of State for Notice of Proposed Rulemaking.

4. The EPS Rule was published in the Arizona Administrative Register on August 25, 2000.

5. Pursuant to Procedural Order dated August 9, 2000, a public comment hearing was scheduled for November 9, 2000, and interested parties were requested to file written comments on or before October 5, 2000, and Reply comments on or before October 24, 2000. Staff conducted a workshop on the proposed EPS on August 29, 2000.

6. The public comment hearing on the amendments to the Rules took place as scheduled on November 9, 2000. Written and/or verbal comments were received from TEP; the Environmental Group; RUCO; AEPCO; the Solar and Renewable Energy Industries; NWE; Scottsdale; Citizens, APS and Staff.

7. After consideration of the filed written comments and oral comments received in the public comment hearing, the Hearing Division recommended the Proposed Modifications to the amendments to the Rules as set forth in Appendix A, attached hereto and incorporated herein by reference. The Proposed Modifications modify A.A.C. R14-2-1618.

8. The Proposed Modifications do not substantively change the EPS Rule as published in the Arizona Register.

9. The Concise Explanatory Statement is set forth in Appendix B, attached hereto and incorporated by reference.

**CONCLUSIONS OF LAW**

1. Pursuant to the Arizona Constitution, Article XV, Section 3 and the Arizona Revised Statutes, Title 40 generally, the Commission has jurisdiction to adopt amended A.A.C. R14-2-1601 and R14-2-1618.

2. Notice of the hearing was given in the manner prescribed by law.

3. The Proposed Modifications are not substantive in nature.

4. Adoption of the Environmental Standard Portfolio Rule and the Proposed Modifications is in the public interest, and should be approved.

5. The Concise Explanatory Statement as set forth in Appendix B should be adopted.

**ORDER**

IT IS THEREFORE ORDERED that A.A.C. R14-2-1601 and R14-2-1618, as set forth in Appendix A and the Concise Explanatory Statement, as set forth in Appendix B are hereby adopted.

IT IS FURTHER ORDERED that the Commission's Utilities Division shall submit the adopted amended Rule A.A.C. R14-2-1601 and R14-2-1618 to the Office of the Secretary of State.

IT IS FURTHER ORDERED that if not already filed, affected Load-Serving Entities shall file their tariffs to implement the Environmental Portfolio Tariff no later than February 15, 2001.

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IT IS FURTHER ORDERED that R14-2-1618 shall be effective for each individual Load-Serving Entity upon Commission approval of its Environmental Portfolio Standard tariff.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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|---|---|---|
| CHAIRMAN | COMMISSIONER | COMMISSIONER |

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _________, 2001.

________________________________
BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _________________

SERVICE LIST FOR: PROPOSED RULEMAKING FOR THE ENVIRONMENTAL PORTFOLIO STANDARD

DOCKET NO.: RE-00000C-00-0377

SERVICE LIST FOR RE-00000C-00-0377

Christopher Kempley, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Deborah Scott, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
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APPENDIX A

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATION

CHAPTER 2. CORPORATION COMMISSION – FIXED UTILITIES

ARTICLE 16. RETAIL ELECTRIC COMPETITION

Article 16. Retail Electric Competition

R14-2-1601. Definitions

1. No change.
2. No change.
3. No change.
4. No change.
5. No change.
6. No change.
7. No change.
8. No change.
9. No change.
10. No change.
11. No change.
12. No change.
13. No change.
14. No change.
15. No change.
16. No change.
17. No change.
18. No change.
19. "Green Pricing" means a program offered by an Electric Service Provider where customers elect to pay a rate premium for ~~electricity generated by renewable sources~~ renewable-generated electricity.
20. No change.
21. No change.
22. No change.
23. No change.
24. No change.
25. No change.

26. No change.

27. No change.

28. No change.

29. “Net Metering” or “Net Billing” is a method by which customers can use electricity from customer-sited solar electric generators to offset electricity purchased from an Electric Service Provider. The customer only pays for the “Net” electricity purchased.

~~29~~.30. “Noncompetitive Services” means Distribution Service, Standard Offer Service, transmission, and any ancillary services deemed to be non-competitive by the Federal Energy Regulatory Commission, Must-Run Generating Units services, provision of customer demand and energy data by an Affected Utility or Utility Distribution Company to Electric Service Providers, and those aspects of Metering Service set forth in R14-2-1612(K).

~~30~~.31. “OASIS” is Open Access Same-Time Information System, which is an electronic bulletin board where transmission-related information is posted for all interested parties to access via the Internet to enable parties to engage in transmission transactions.

~~31~~.32. “Operating Reserve” means the generation capability above firm system demand used to provide for regulation, load forecasting error, equipment forced and scheduled outages, and local area protection to provide system reliability.

~~32~~.33. “Potential Transformer (PT)/Voltage Transformer (VT)” is an electrical device used to step down primary voltages to 120V for metering purposes.

~~33~~.34. “Provider of Last Resort” means a provider of Standard Offer Service to customers within the provider’s certificated area whose annual usage is 100,000 kWh or less and who are not buying Competitive Services.

~~34~~.35. “Public Power Entity” incorporated by reference the definition set forth in A.R.S. § 30-801.16.

~~35~~.36. “Retail Electric Customer” means the person or entity in whose name service is rendered.

~~36~~.37. “Scheduling Coordinator” means an entity that provides schedules for power transactions over transmission or distribution systems to the party responsible for the operation and control of the transmission grid, such as a Control Area Operator, Arizona Independent Scheduling Administrator, or Independent System Operator.

~~37~~.38. “Self-Aggregation” is the action of a retail electric customer that combines its own metered loads into a single purchase block.

39. “Solar Electric Fund” is the funding mechanism established by this Article through which deficiency payments are collected and solar energy projects are funded in accordance with this Article.

~~38.~~40. “Standard Offer Service” means Bundled Service offered by the Affected Utility or Utility Distribution Company to all consumers in the Affected Utility’s or Utility Distribution Company’s service territory at regulated rates including metering, meter reading, billing and collection services, demand side management services including but not limited to time-of-use, and consumer information services. All components of Standard Offer Service shall be deemed noncompetitive as long as those components are provided in a bundled transaction pursuant to R14-2-1606(A).

~~39~~.41 “Stranded Cost” includes:

a. The verifiable net difference between:

i. The net original cost of all the prudent jurisdictional assets and obligations necessary to furnish electricity (such as generating plans, purchased power contracts, fuel contracts, and regulatory assets), acquired or entered into prior to December 26, 1996, under traditional regulation of Affected Utilities; and

ii. The market value of those assets and obligations directly attributable to the introduction of competition under this Article;

b. Reasonable costs necessarily incurred by an Affected Utility to effectuate divestiture of its generation assets;

c. Reasonable employee severance and retraining costs necessitated by electric competition, where not otherwise provided; and

d. Other transition and restructuring costs as approved by the Commission as part of the Affected Utility’s Stranded Cost determination pursuant to R14-2-1607.

~~40~~.42. “System Benefits” means Commission-approved utility low income, demand side management, Consumer Education, environmental, renewables, long-term public benefit research and development, and nuclear fuel disposal and nuclear power plant decommissioning programs, and other programs that may be approved by the Commission from time to time.

~~41~~.43. “Transmission Primary Voltage” is voltage above 25 kV as it relates to metering transformers.

~~42~~.44. “Transmission Service” refers to the transmission of electricity to retail electric customers or to electric distribution facilities and that is so classified by the Federal Energy Regulatory Commission or, to the extent permitted by law, so classified by the Arizona Corporation Commission.

~~43~~.45. “Unbundled Service” means electric service elements provided and priced separately, including, but not limited to, such service elements as generation, transmission, distribution, Must Run Generation, metering meter reading, billing and collection, and ancillary services. Unbundled Service may be sold to consumers or to other Electric Service Providers.

~~44.~~46. "Universal Node Identifier" is a unique, permanent, identification number assigned to each service delivery point.

~~45.~~47. "Utility Distribution Company" (UDC) means the electric utility entity regulated by the Commission that operates, constructs, and maintains the distribution system for the delivery of power to the end user point of delivery on the distribution system.

~~46.~~48. "Utility Industry Group" (UIG) refers to a utility industry association that establishes national standards for data formats.

R14-2-1618. Environmental Portfolio Standard

A. Starting on January 1, 2001, or upon Commission approval of its Environmental Portfolio Standard tariff, whichever is later, any Load-Serving Entity ~~Electric Service Provider~~ selling electricity or aggregating customers for the purpose of selling electricity under the provisions of this Article must derive at least .2% of the total retail energy sold from new solar resources or environmentally-friendly renewable electricity technologies, whether that energy is purchased or generated by the seller. Solar resources include photovoltaic resources and solar thermal resources that generate electricity. New solar resources and environmentally-friendly renewable electricity technologies are those installed on or after January 1, 1997.

1. Electric Service Providers ~~Competitive~~ ~~ESPs~~, that are not UDCs, are exempt from portfolio requirements until 2004, but could voluntarily elect to participate. ESPs choosing to participate would receive a pro rata share of funds collected from the Environmental Portfolio Surcharge delineated in R14-2-1618.A.2 for portfolio purposes to acquire eligible portfolio systems or electricity generated from such systems.

2. Utility Distribution Companies would recover part of the costs of the portfolio standard through current System Benefits Charges, if they exist, including a re-allocation of demand side management funding to portfolio uses. Additional portfolio standard costs will be recovered by a customer Environmental Portfolio Surcharge on the customers' monthly bill. The Environmental Portfolio Surcharge shall be assessed monthly to every metered and/or non-metered retail electric service. This monthly assessment will be the lesser of $0.00875 per kWh or:

- Residential Customers: $.35 per service
- Non-Residential Customers: $13 per service
- Non-Residential Customers whose metered demand is 3,000 kW or more for 3 consecutive months: $39.00 per service. ~~The Environmental Portfolio Surcharge shall be $.000875 per kWh of retail electricity purchased by the customer. There shall be a surcharge cap of $ .35 per month for~~

~~residential customers. There shall be a surcharge cap of $13 per month per meter or per service if no meter is used for all non-residential customers, except for those non- residential customers whose meter's registered demand is 3000 kW or more for 3 consecutive months, who will be subject to a surcharge cap of $39.00 per month per meter.~~

3. Customer bills shall reflect a line item entitled "Environmental Portfolio Surcharge, mandated by the Corporation Commission."

4. Utility Distribution Companies or ESPs that do not currently have a renewables program may request a waiver or modification of this section due to extreme circumstances that may exist.

B. The portfolio percentage shall increase after December 31, 2000.

1. Starting January 1, 2001, the portfolio percentage shall increase annually and shall be set according to the following schedule:

| YEAR | PORTFOLIO PERCENTAGE |
|---|---|
| 2001 | .2% |
| 2002 | .4% |
| 2003 | .6% |
| 2004 | .8% |
| 2005 | 1.0% |
| 2006 | 1.05% |
| 2007-2012 | 1.1% |

2. The Commission would continue the annual increase in the portfolio percentage after December 31, 2004 only if the cost of environmental portfolio electricity has declined to a Commission-approved cost/benefit point. The Director, Utilities Division shall establish, not later than January 1, 2003, an Environmental Portfolio Cost Evaluation Working Group to make recommendations to the Commission of an acceptable portfolio electricity cost/benefit point or portfolio kWh cost impact maximum that the Commission could use as a criteria for the decision to continue the increase in the portfolio percentage. The recommendations of the Working Group shall be presented to the Commission not later than June 30 ~~December 31~~, 2003. In no event, however, shall the Commission increase the surcharge caps as delineated in R14-2-1618.A.2 above.

3. The requirements for the phase-in of various technologies shall be:

a. In 2001, the Portfolio kWh makeup shall be at least 50 percent solar electric, and no more than 50 percent other environmentally-friendly renewable electricity technologies or solar hot water or R&D on solar electric resources, but with no more than 10 percent on R&D.

b. In 2002 and 2003, the Portfolio kWh makeup shall be at least 50 percent solar electric, and no more than 50 percent other environmentally-friendly renewable electricity technologies or solar hot water or R&D on solar electric resources, but with no more than 5 percent on R&D.

~~c. In 2003, the Portfolio kWh makeup shall be at least 50 percent solar electric, and no more than 50 percent other environmentally-friendly renewable electricity technologies or solar hot water or R&D on solar electric resources, but with no more than 5 percent on R&D.~~

c.~~d.~~ In 2004, through 2012, the portfolio kWh makeup shall be at least 60 percent solar electric with no more than 40 percent solar hot water or other environmentally-friendly renewable electricity technologies.

~~C. The portfolio requirement shall apply to all retail electricity in the years 2001 and thereafter.~~

C.~~D.~~ Load-Serving Entities ~~Electric Service Providers~~ shall be eligible for a number of extra credit multipliers that may be used to meet the portfolio standard requirements.~~:~~ Extra credits may be used to meet portfolio requirements and extra credits from solar electric technologies will also count toward the solar electric fraction requirements in R14-2-1618B.3. With the exception of the Early Installation Extra Credit Multiplier, which has a five-year life from operational start-up, all other extra credit multipliers are valid for the life of the generating equipment.

1. Early Installation Extra Credit Multiplier: For new solar electric systems installed and operating prior to December 31, 2003, Load-Serving Entities ~~Electric Service Providers~~ would qualify for multiple extra credits for kWh produced for 5 years following operational start-up of the solar electric system. The 5-year extra credit would vary depending upon the year in which the system started up, as follows:

| YEAR | EXTRA CREDIT MULTIPLIER |
|---|---|
| 1997 | .5 |
| 1998 | .5 |
| 1999 | .5 |
| 2000 | .4 |
| 2001 | .3 |
| 2002 | .2 |
| 2003 | .1 |

Eligibility to qualify for the ~~The~~ Early Installation Extra Credit Multiplier would end in 2003. However, any eligible system that was operational in 2003 or before would still be allowed the applicable extra credit for the full five years after operational start-up.

2. Solar Economic Development Extra Credit Multipliers: There are 2 equal parts to this multiplier, an in-state installation credit and an in-state content multiplier.

a. In-State Power Plant Installation Extra Credit Multiplier: Solar electric power plants installed in Arizona shall receive a .5 extra credit multiplier.

b. In-State Manufacturing and Installation Content Extra Credit Multiplier: Solar electric power plants shall receive up to a .5 extra credit multiplier related to the manufacturing and installation content that comes from Arizona. The percentage of Arizona content of the total installed plant cost shall be multiplied by .5 to determine the appropriate extra credit multiplier. So, for instance, if a solar installation included 80% Arizona content, the resulting extra credit multiplier would be .4 (which is .8 X .5).

3. Distributed Solar Electric Generator and Solar Incentive Program Extra Credit Multiplier: Any distributed solar electric generator that meets more than one of the eligibility conditions will be limited to only one .5 extra credit multiplier from this subsection. Appropriate meters will be attached to each solar electric generator and read at least once annually to verify solar performance.

a. Solar electric generators installed at or on the customer premises in Arizona. Eligible customer premises locations will include both grid-connected and remote, non-grid-connected locations. In order for Load-Serving Entities ~~Electric Service Providers~~ to claim an extra credit multiplier, the Load-Serving Entity ~~Electric Service Provider~~ must have contributed at least 10% of the total installed cost or have financed at least 80% of the total installed cost.

b. Solar electric generators located in Arizona that are included in any Load-Serving Entity's ~~Electric Service Provider's~~ Green Pricing program.

c. Solar electric generators located in Arizona that are included in any Load-Serving Entity's ~~Electric Service Provider's~~ Net Metering or Net Billing program.

d. Solar electric generators located in Arizona that are included in any Load-Serving Entity's ~~Electric Service Provider's~~ solar leasing program.

e. All Green Pricing, Net Metering, Net Billing, and Solar Leasing programs must have been reviewed and approved by the Director, Utilities Division in order for the Load-Serving Entity ~~Electric Service Provider~~ to accrue extra credit multipliers from this subsection.

4. All multipliers are additive, allowing a maximum combined extra credit multiplier of 2.0 in years 1997-2003, for equipment installed and manufactured in Arizona and either installed at customer premises or participating in approved solar incentive programs. So, if a ~~an~~ Load-Serving Entity ~~Electric Service Provider~~ qualifies for a 2.0 extra credit multiplier and it produces 1 solar kWh, the Load-Serving Entity ~~Electric Service Provider~~ would get credit for 3 solar kWh (1 produced plus 2 extra credit).

D.~~E~~. Load-Serving Entities ~~Electric Service Providers~~ selling electricity under the provisions of this Article shall provide reports on sales and solar power as required in this Article, clearly demonstrating the output of solar resources, the installation date of solar resources, and the transmission of energy from those solar resources to Arizona consumers. The Commission may conduct necessary monitoring to ensure the accuracy of these data.

E.~~F.~~ If a ~~an~~ Load-Serving Entity ~~Electric Service Provider~~ selling electricity under the provisions of this Article fails to meet the requirements of this rule as modified by the Commission after consideration of the recommendations of the Environmental Portfolio Cost Evaluation Working Group, the Commission may ~~shall~~ impose a deficiency payment ~~penalty~~, beginning no earlier than January 1, 2004, on that Load-Serving Entity ~~Electric Service Provider~~ that the Load-Serving Entity ~~Electric Service Provider~~ pay an amount equal to 30¢ per kWh to the Solar Electric Fund for deficiencies in the provision of solar electricity. This penalty, which is in lieu of any other monetary payment ~~penalty~~ which may be imposed by the Commission, may not be imposed for any calendar year prior to 2004. This Solar Electric Fund will be established and utilized to purchase solar electric generators or solar electricity in the following calendar year for the use by public entities in Arizona such as schools, cities, counties, or state agencies. Title to any equipment purchased by the Solar Electric Fund will be transferred to the public entity. In addition, if the provision of solar energy is consistently deficient, the Commission may void a ~~an~~ Load-Serving Entity's ~~Electric Service Provider's~~ contracts negotiated under this Article.

1. The Director, Utilities Division shall establish a Solar Electric Fund in 2004 to receive deficiency payments and finance solar electricity projects.
2. The Director, Utilities Division shall select an independent administrator for the selection of projects to be financed by the Solar Electric Fund. A portion of the Solar Electric Fund shall be used for administration of the Fund and a designated portion of the Fund will be set aside for ongoing operation and maintenance of projects financed by the Fund.

F.~~G.~~ Photovoltaic or solar thermal electric resources that are located on the consumer's premises shall count toward the solar portfolio standard applicable to the current Load-Serving Entity ~~Electric Service Provider~~ serving that consumer.

G.~~H.~~ Any solar electric generators installed by an Affected Utility to meet the solar portfolio standard shall be counted toward meeting renewable resource goals for Affected Utilities established in Decision No. 58643.

H.~~I.~~ Any Load-Serving Entity ~~Electric Service Provider~~ ~~or independent solar electric generator~~ that produces or purchases any eligible ~~solar~~ kWh in excess of its annual portfolio requirements may save or bank those excess ~~solar~~ kWh for use or sale in future years. Any eligible ~~solar~~ kWh produced subject to this rule may be sold or traded to any Load-Serving Entity ~~Electric Service Provider~~ that is subject to this rule. Appropriate documentation, subject to Commission review, shall be given to the purchasing entity and shall be referenced in the reports of the Load-Serving Entity ~~Electric Service Provider~~ that is using the purchased kWh to meet its portfolio requirements.

I.~~J.~~ Environmental Portfolio Standard requirements shall be calculated on an annual basis, based upon electricity sold during the calendar year.

J.~~K.~~ A ~~An~~ Load-Serving Entity ~~Electric Service Provider~~ shall be entitled to receive a partial credit against the portfolio requirement if the Load-Serving Entity ~~Electric Service Provider~~ or its affiliate owns or makes a significant investment in any solar electric manufacturing plant that is located in Arizona. The credit will be equal to the amount of the nameplate capacity of the solar electric generators produced in Arizona and sold in a calendar year times 2,190 hours (approximating a 25% capacity factor).

1. The credit against the portfolio requirement shall be limited to the following percentages of the total portfolio requirement:

| | |
|---|---|
| 2001 | Maximum of 50 % of the portfolio requirement |
| 2002 | Maximum of 25 % of the portfolio requirement |
| 2003 and on | Maximum of 20 % of the portfolio requirement |

2. No extra credit multipliers will be allowed for this credit. In order to avoid double-counting of the same equipment, solar electric generators that are used by other Load-Serving Entities ~~Electric Service Providers~~ to meet their Arizona portfolio requirements will not be allowable for credits under this Section for the manufacturer/Electric Service Provider to meet its portfolio requirements.

K.~~L.~~ The Director, Utilities Division shall develop appropriate safety, durability, reliability, and performance standards necessary for solar generating equipment and environmentally-friendly renewable electricity technologies and to qualify for the portfolio standard. Standards requirements will apply only to facilities constructed or acquired after the standards are publicly issued.

L.~~M.~~ A ~~An~~ Load-Serving Entity ~~Electric Service Provider~~ shall be entitled to meet up to 20% of the portfolio requirement with solar water heating systems or solar air conditioning systems purchased by the Load-Serving Entity ~~Electric Service Provider~~ for use by its customers, or purchased by its customers and paid for by the Load-Serving Entity ~~Electric Service Provider~~ through bill credits or other similar mechanisms. The solar water heaters must replace or supplement the use of electric water heaters for residential, commercial, or industrial water heating purposes. For the purposes of this rule, solar water heaters will be credited with 1 kWh of electricity produced for each 3,415 British Thermal Units of heat produced by the solar water heater and solar air conditioners shall be credited with kWhs equivalent to those needed to produce a comparable cooling load reduction. Solar water heating systems and solar air conditioning systems shall be eligible for Early Installation Extra Credit Multipliers as defined in R14-2-1618 D.1 and Solar Economic Development Extra Credit Multipliers as defined in R14-2-1618 D.2.b.

M.~~N.~~ A ~~An~~ Load-Serving Entity ~~Electric Service Provider~~ shall be entitled to meet the portfolio requirement with electricity produced in Arizona by environmentally-friendly renewable electricity technologies that are defined as in-state landfill gas generators, wind generators, and biomass generators, consistent with the phase-in schedule in R14-2-1618 B.3. Systems using such technologies shall be eligible for Early Installation Extra Credit Multipliers as defined in R14-2-1618 D.1 and Solar Economic Development Extra Credit Multipliers as defined in R14-2-1618 D.2.b.

APPENDIX B

**CONCISE EXPLANATORY STATEMENT**

This explanatory statement is provided to comply with the provisions of A.R.S. § 41-1036.

## I. <u>CHANGES IN THE TEXT OF THE PROPOSED EPS RULE FROM THAT CONTAINED IN THE NOTICE OF RULEMAKING FILED WITH THE SECRETARY OF STATE</u>

After public comment, the following sections have been modified from the text of the revised rules published in the Arizona Administrative Register:

**<u>R14-2-1618.A</u>**

Add "or upon Commission approval of its Environmental Portfolio Standard tariff, whichever is later," after "January 1, 2001," in the first sentence of section 1618.A.

**<u>R14-2-1618.A.1</u>**

Delete "Competitive ESPs", and replace with "Electric Service Providers". Insert "from the Environmental Portfolio Surcharge delineated in R14-2-1618.A.2" after "funds collected".

**<u>R14-2-1618.A.2</u>**

Delete the third and forth sentences of section 1618.A.2 and replace with the following:

"The Environmental Portfolio Surcharge shall be assessed monthly to every metered and/or non-metered retail electric service. This monthly assessment will be the lesser of $0.00875 per kWh or:

- Residential Customers: $.35 per service
- Non-Residential Customers: $13 per service
- Non-Residential Customers whose metered demand is 3,000 kW or more for 3 consecutive months: $39.00 per service."

**<u>R14-2-1618.B.2</u>**

Delete "December 31" in the third sentence of section 1618.B.2 and replace with "June 30".

**<u>R14-2-1618.B.3</u>**

Insert "and 2003" after "In 2002" in section 1618.B.3.b. Delete section 1618.B.3.c and re-letter accordingly.

**R14-2-1618.C**

Delete this paragraph in its entirety and reletter the Rule accordingly.

**R14-2-1618.D**

Replace "Electric Service Providers" with "Load-Serving Entities" whenever the former appears through this section.

Insert a second sentence after "requirements:" as follows "Extra Credits may be used to meet portfolio requirements and extra credits from solar electric technologies will also count toward the solar electric fraction requirements in R14-2-1618.B.3. With the exception of the Early Installation Credit Multiplier, which has a five-year life from operational system start-up, all other extra credit multipliers are valid for the life of the generating equipment." Insert a period and delete the colon after "requirements."

**R14-2-1618.D.1**

Following the table of extra credit multipliers, insert "Eligibility to qualify for" before "The Early Installation Credit Multiplier" and insert a second sentence as follows: "However, any eligible system that was operational in 2003 or before would still be allowed the applicable extra credit for the full five years after operational start-up."

**R14-2-1618.D.3**

Replace "Electric Service Providers" with "Load-Serving Entities".

**R14-2-1618.D.4**

Replace "Electric Service Provider" with "Load-Serving Entity".

**R14-2-1618.E**

Replace "Electric Service Providers" with "Load-Serving Entities".

**R14-2-1618.F**

Replace "Electric Service Provider" with "Load-Serving Entity". Replace "shall" with "may" before "impose". Replace "penalty" with "deficiency payment" in the first sentence. Insert "no earlier than" before "January 1, 2004,". Replace "penalty" with "payment" in the third sentence.

**R14-2-1618.G**

Replace "Electric Service Provider" with "Load-Serving Entity".

**R14-2-1618.I**

Replace "Electric Service Provider" with "Load-Serving Entity". Delete "or independent solar electric generator" after "Electric Service Provider". Replace "solar" with "eligible" where it appears before "kWh".

**R14-2-1618.K**

Replace "Electric Service Providers" with "Load-Serving Entities".

**R14-2-1618.M**

Replace "Electric Service Provider" with "Load-Serving Entity".

**R14-2-1618.N**

Replace "Electric Service Provider" with "Load-Serving Entity".

## II. EVALUATION OF THE ARGUMENTS FOR AND AGAINST THE PROPOSED RULES

**General Issues**

In its comments TEP supports the proposed EPS Rules, believing they will foster development of long-term, cost effective and sustainable growth in Arizona's renewable industries. The Environmental Group believes the proposed EPS Rules balance the benefits of clean energy generation with a modest cost. The Solar and Renewable Industries also supported the EPS Rules, stating they are positioned to help the Affected Utilities meet the requirements under the EPS and that solar and renewable energy technology investment in Arizona depends on passage of the EPS Rules.

**Issue**: RUCO and AEPCO argued that the mandatory surcharge violates Article XV, section 14 of the Arizona Constitution, which requires the Commission to ascertain the fair value of a public service corporation's property in Arizona prior to establishing just rates. AEPCO states that the surcharge will fall many hundred thousand dollars short each year of meeting the costs of the EPS mandate, thus the adoption of the EPS Rules denies AEPCO its constitutional right to recover its costs and earn a reasonable rate of return on fair value.

RUCO also argued that the Commission does not have authority to establish the Solar Electric Fund ("SEF") because, according to RUCO, only the legislature has the authority to establish such fund. Absent authority to create the SEF, by law the proceeds of penalties are to be paid into the state treasury and credited to the general fund. Further, RUCO argued the concept of the SEF violates state procurement laws which specifically set forth the terms and conditions for what a state agency may contract for or purchase on its own behalf with state funds. Finally, RUCO claims the Commission's authority is limited in the amount of penalty it can impose. Article XV, section 16 of the Arizona Constitution and A.R.S. section 40-425 (A) limit the penalty to not less than $100 nor more than $5,000 for each offense. According to RUCO, having the penalty determined by kWh, falls outside constitutional limits.

Staff argued that the Commission's constitutional and statutory ratemaking authority includes adoption of the Rule. Staff cited that under the Arizona constitutional provisions of Article 15, Section 3 and statutory provisions such as A.R.S. §§ 40-321 and 40-331, the Commission may adopt rules requiring sales of electricity to conform to an environmental standard for the benefit of the Affected Utilities, ESPs and the public. Staff argued the Commission has the constitutional authority to set an appropriate market structure for just and reasonable rates in a competitive environment. If the Commission determines that the market structure for just and reasonable rates in a competitive market includes environmentally-friendly sources such as solar, the Commission may adopt rules under Section 3 to ensure its goals are met. According to staff, if the collection of penalties is reasonably related to these goals, the Commission may impose the penalties as a necessary step in its rate setting powers and under its authority to ensure the health and welfare of the public.

Staff argued that surcharges can be implemented in any number of ways for specific load-serving entities. As the Rule provides, some surcharges will be passed through as System Benefits Charges already included in rates for some entities. Staff noted that other entities may request that the surcharge be implemented on an interim basis as either a deferral account or an adjuster clause to be reviewed in a subsequent rate proceeding for that entity. It is Staff's opinion that even in the event recent court decisions are upheld on appeal, the Commission could design mechanisms under the rule for individual utilities that would permit the EPS to continue.

**Analysis:** The Commission's ratemaking powers encompass a broader spectrum of actions than simply setting rates, and are matters uniquely for Commission determination. This Rule is an essential step in setting rates for Utility Distribution Companies and Load-Serving Entities because the Commission has determined that just and reasonable electric rates for Arizona should include a portfolio of renewable resources as the source of electricity. The Commission has appealed the recent court decisions which appear to require a finding of fair value whenever rates are set. At this juncture the Commission believes that the EPS Rule and its attendant surcharge are within the powers of the Commission to promulgate.

**Resolution:** No changes required.

**Issue:** Although arguing that the Commission does not have the authority to adopt the EPS Rules, AEPCO argued that if it does, the Commission should not apply the rule to the cooperatives. According to AEPCO: 1) it needs no new resources, of any kind, in the near future to meet the state's rural power needs; 2) investment in renewable resources when no resources are needed exacerbates consumer rate impacts and contributes unnecessarily to stranded costs; 3) cooperatives have little or no demand side management or other similar program funds to shift to renewable expenditures unlike investor-owned utilities; 4) non-profit cooperatives have no shareholder source of funds to apply to the capital costs associated with the EPS mandate, and thus may look only to borrowed funds to finance the EPS mandate, but since the environmental portfolio does not meet the lender's requirement that capital be expended only on needed, least-cost resources, the cooperatives have no funding source other than the surcharge; and 6) any ancillary, general economic benefits the EPS Rule may generate will most likely benefit the state's urban areas.

AEPCO proposed a new subsection 1618.A.1:

> "1. Affected Utilities which are non-profit member owned cooperatives are exempt from the portfolio percentage requirements set forth in R14-2-1618.B.1 except as provided in this subsection. Such cooperative Affected Utilities shall collect the Environmental Portfolio surcharge authorized by R14-2-1618.A.3 and shall apply the proceeds toward meeting the renewable portfolio percentages. To the extent that the

proceeds of the Surcharge are insufficient to allow such cooperative Affected Utilities to meet or exceed the renewable portfolio percentages, no further purchase of installation of renewable resources or technologies shall be required."

TEP argued that the Commission should reject AEPCO's position that certain utilities should be exempt from the Portfolio Standard requirements because all Arizona residents benefit from the development of renewable resources and thus all should contribute to funding the development of renewable resources.

Staff disagreed that any changes need to be made to the Rule on account of the cooperatives. Staff noted that R14-2-1618.A.4 provides that "Utility Distribution Companies or ESPs that do not currently have a renewables program may request a waiver or modification of this section due to extreme circumstances that may exist."

**Analysis**: With the growth that has taken place in this state, not all of the cooperatives are located in strictly rural communities. If the cooperatives expect to incur substantial hardship on account of the rule, they should be able to take advantage of the waiver provisions of the proposed rule.

**Resolution:** No change required.

**Issue:** The Solar and Renewable Industries do not believe the EPS is dependant on retail competition or even the presence of competitive ESPs, to be successful. The Solar and Renewable Industries suggested that the EPS be promulgated under a new Article entitled "Environmental Portfolio Standard" rather than as part of the Retail Electric Competition Rules.

Staff agreed that to promulgate the EPS under a new Article independent of the retail Electric Competition Rules is reasonable. Staff suggested that at some time in the future, the new Article could also include the proposed Distributed Generation and Interconnection Rules, possible future rules related to reliability, and possible future rules related to electric transmission planning and adequacy studies.

**Analysis:** The suggestion to promulgate the Environmental Portfolio Standard under a new Article is reasonable, however, to effect such change requires careful consideration of the inter-relationship of the rules. Given the public benefit from enacting this rule sooner rather than later, we will reserve consideration of a new Article to a future date.

**Resolution:** No change required at this time, but the Utilities Division should study the feasibility and desirability of promulgating the EPS Rule as part of a separate Article.

**R14-2-1618.A**

**Issue:** AEPCO noted that 1618.A initially references "Electric Service Providers" as being subject to the Rule, but promptly exempts them from participation until 2004. AEPCO believed a broader term or additional terms need to be used rather than "ESP" in 1618.A and perhaps throughout the Rule. Similarly, AEPCO argued the word "Competitive" before ESP should be stricken in 1618.A.1. Citizens also noted that as written, the rules only apply to ESPs which by definition only include those providing competitive services. Citizens agreed that the term should be broader.

NWE noted that because the Retail Competition Rules define ESPs as a company supplying Competitive Services, which explicitly excludes Standard Offer Service, the use of the term ESP in 1618.A has the effect of excluding Affected Utilities from the portfolio standard. NWE believes the reference should be corrected to include all companies providing standard offer service. NWE noted that the use of ESP is repeated several times in the proposed rule and should be corrected wherever it occurs.

Staff acknowledged that the use of the term Electric Service Provider is a hold over from an earlier version of the Retail Electric Competition Rules and a slightly different definition of the term "Electric Service Provider." Staff recommended that to avoid any confusion as to the applicability of the portfolio requirements on UDCs, that every reference to Electric Service Provider or "ESP", with the exception of sections R14-2-1618.A.1 and A.4 be changed to "Load-Serving Entity." Load-Serving Entity is defined as "An Electric Service Provider, Affected Utility or Utility Distribution Company, excluding a Meter Service Provider and Meter Reading Service Provider." In its Reply comments, TEP supported Staff's recommended changes.

**Analysis:** The portfolio standard is intended to apply to Affected Utilities and UDCs as well as ESPs. Staff's recommended modification is reasonable and should be adopted. The use of the term "Competitive ESPs" in section 1618.A.1 is unnecessary in light of Staff's recommended change, and the term "Competitive" should be eliminated.

**Resolution:** Throughout the proposed rule, change reference to Electric Service Providers or ESPs to "Load-Serving Entity" except in sections 1618.A.1 and A.4. Delete "Competitive" before "ESPs" in section 1618.A.1. For clarity replace "ESP" with "electric Service Provider" in section 1618.A.1.

**R14-2-1618.A.1**

**Issue:** AEPCO believed the words "pro rata share of funds collected for portfolio purposes" is vague. AEPCO suggested that if "share of funds" relates to the surcharge in 1618.A.2, a reference to that section would clarify what monies are involved.

**Analysis:** Additional clarity would result by adding the phrase "from the Environmental Portfolio Surcharge delineated in R14-2-1618.A.2" after "funds collected".

**Resolution:** Modify section 1618.A.1 as discussed above.

**R14-2-1618.A.2**

**Issue:** Scottsdale supported the use of renewable sources of energy as a means to reduce energy related pollution in the City of Scottsdale, but believed the proposed standard is unfair to municipalities because of the diversity and number of electric meters that cities have in service. Scottsdale has approximately 330 separate electric meters and APS has estimated that the formula in R14-2-1618.A.2 will cost Scottsdale approximately $20,000 per year.

APS remarked that the inequity Scottsdale complained of is no different that that of 330 individual small non-residential customers, and that to allow consolidation of customer accounts of large multiple-metered customers would require increasing the EPS Surcharge for other non-residential customers or reduce the funding available to promote environmentally friendly technologies.

Staff disagreed that the surcharge was unfair to municipalities because all customers pay the same rate per kWh for the surcharge. Staff believed that a city might not pay more for the surcharge that a chain of stores with many outlets. Staff suggested that cities such as

Scottsdale and other commercial customers consider approaching their Utility Distribution Company about combining appropriate loads onto fewer meters. By combining loads, it is possible for the customer to move to a more favorable rate, resulting in significant electric bill savings. Staff recommended that no change be made.

**Analysis:** The rules treat municipalities on a par with any other consumer of electricity and are not unfair.

**Resolution:** No change required.

**Issue:** Citizens noted that section 1618.A.2 provides for the partial recovery of the EPS costs by means of a customer surcharge. Citizens believed that the surcharge should be defined as applying to the generation portion of the transaction in a competitive environment, and there is no reason to introduce the UDC into the middle of the generation transaction, particularly when the UDC is not offering the service for which the surcharge is being applied. Citizens argued the reasonable approach would be for the UDC to charge the surcharge to its Standard Offer customers and the participating ESP to apply the charge to its customers.

AEPCO questioned whether the pro rata sharing would be customer class specific, total system kWh driven, or based on some other formula.

TEP believed that Staff's recommendations are sufficient to address Citizens' concerns regarding the of the portfolio surcharge. Staff disagreed with Citizens and argued that the easiest and guaranteed way to ensure that all customers pay their share is for the Utility Distribution Company to collect the surcharge from all customers. Staff noted that since the rule allows ESPs the option to voluntarily opt out of the program, using Citizens' approach would mean that nobody would collect the surcharge from the customers of the non-participating ESPs. This would give those non-participating ESPs a competitive advantage over the UDC and other ESPs that do participate in the Portfolio Standard.

Staff explained that in order to collect its pro rata share of the surcharge funds an ESP would simply notify the UDC that it is participating in the Portfolio Standard. The UDC would then send the ESP the exact amount of surcharge monies collected from the participating ESP's customers. Staff recommended no change be made.

**Analysis:** The easiest approach appears to be to have the UDC collect the surcharge monies from its customers and then send the participating ESPs their share. No other UDC supported Citizens' proposal.

**Resolution:** No change required.

**Issue:** In section 1618.A.2 which provides for caps on the surcharge, Citizens noted that it is not clear if Dusk-to-Dawn lighting accounts were considered. Citizens argued that a $13 per light charge for commercial lighting would significantly impact street lighting customers. Citizens advocated excluding Dusk-to-Dawn lighting from the application of the surcharge.

TEP opposed an exemption for the surcharge for Dusk-to-Dawn lighting. TEP believed that if a municipal customer cannot afford the $13 per meter charge, it is a matter that can adequately be addressed with an ESP.

Staff also disagreed with Citizens and believes that perhaps Citizens misread or misunderstood the surcharge because the $13 figure is a cap and a streetlight would have to use over 14,000 kWh in a month to reach the $13 cap. Staff stated that a typical 100 Watt high pressure sodium dusk to dawn light, which is on 10 hours a night in a 30 day month would use only 30 kWh (or 1 kWh per day) and the Portfolio Surcharge for that light for that month would be 2.6 cents. Staff recommended that Citizens' suggestion be rejected.

APS believed it was the intent of the rule that all services (metered or non-metered) would be subject to the ESP Surcharge and it could be perceived that under current wording residential customers would arguably be exempt for any non-metered service currently being provided. In contrast, all non-residential customers will pay the cap regardless of their actual or contract kWh, and that the $13 per month surcharge could greatly exceed their proportionate amount.

APS recommended that section A.2 be modified as follows:

"The Environmental Portfolio Surcharge shall be assessed monthly to every metered and/or non-metered retail electric service. This monthly assessment will be the lesser of $0.00875 per kWh or:

- Residential Customers: $.35 per service

- Non-Residential Customers: $13 per service.
- Non-Residential Customers whose metered demand is 3,000 kW or more for 3 consecutive months: $39.00 per service."

Staff agreed with APS's suggested clarification.

**Analysis**: Citizens' comments indicate that the rule may be vague as currently written. APS' suggested modification rectifies the ambiguity and should be adopted.

**Resolution:** Modify section 1618.A.2 as proposed by APS.

**R14-2-1618.B.2**

**Issue:** Section 1618.B.3 orders the Director of the Utilities Division to establish an Environmental Portfolio Cost Evaluation Working Group to study the cost/benefits of the portfolio standard. The rule provides that the Commission shall consider the recommendations of the Working Group by December 31, 2003. After considering the conclusions of the Working Group the Commission could determine that the portfolio percentage established in the rule should be modified in the years after 2004. At the public comment hearing, AEPCO raised the issue that if the Commission didn't take action until December 31, 2003, regarding a standard that goes into effect on January 1, 2004, the utilities would not have sufficient time to take action regarding the Commission's action.

Staff agreed with the suggestion that the Working Group submit its final recommendations to the Commission no later than June 30, 2003.

**Analysis:** By moving the date when the Working Group must report to the Commission six months earlier, the Commission will have more time to consider those recommendations and take action. We note the rule as written only provides that the Working Group must submit its recommendations to the Commission by December 31, 2003, but does not require the Commission to take action on those recommendations by any particular date. However, under the Rule the portfolio percentage will not increase, if at all, until the Commission has taken action on the Working Group's cost/benefit recommendations. In any case, the earlier the Commission is able to communicate potential changes in the portfolio percentage to the market participants, the better.

**Resolution:** Delete "December 31" in section 1618.B.2 and replace it with "June 30".

**R14-2-1618.B.3**

**Issue:** AEPCO noted that (b) and (c) read exactly the same for years 2002 and 2003, and if that is the intent, (c) could be deleted and the year "2003" added to (b). Staff concurred.

**Analysis:** AEPCO's comments should be adopted.

**Resolution:** Delete R14-2-1618.B.3.c and insert "and 2003" after "In 2002" in R14-2-1618.B.3.2.b.

**Issue**: NWE noted that depending on the year, 50 to 60 percent of the EPS requirement will be met by solar electric technologies. NWE advocated modifying the rule to clarify that extra credits earned on solar electric technologies will also count toward the solar electric fraction.

Staff agreed and proposed adding a second sentence to section 1618.D after "requirements:" as follows: "Extra Credits may be used to meet portfolio requirements and extra credits from solar electric technologies will also count toward the solar electric fraction required in R14-2-1618.B.3."

**Analysis:** NWE's and Staff's comments clarify the rule and should be adopted.

**Resolution:** Modify R14-2-1618.D as recommended by Staff.

**R14-2-1618.C**

**Issue**: AEPCO claimed that this provision that states "The portfolio requirement shall apply to all retail electricity in the years 2001 and thereafter" is left over from an earlier version of the Rule and can be deleted.

**Analysis:** AEPCO's observations appear to be correct. The language in section 1618.C does not appear necessary, nor does it advance the clarity of the rule.

**Resolution**: Delete section 1618.C and renumber accordingly.

**R14-2-1618.D & I**

**Issue:** NWE argued that rights to qualifying energy and extra credits should be more explicitly defined. NWE believed it may be simpler to define all energy and extra credits as belonging to the person who owns the installation. The owner could, in turn, bank or sell the energy or credits to energy providers who can use them to meet some or all of their EPS requirement.

NWE notes that section 1618.I provides that any ESP or independent solar electric generator that produces or purchases any solar kWh in excess of its annual portfolio requirements may save or bank those solar kWhs for use or sale in future years. The terms "independent solar electric generator" and "solar kWh" are not defined. NWE suggested this section should be modified to provide that the owner or any facility producing energy or extra credits that satisfy the requirements of paragraph 1618 may sell or bank the energy or extra credits for use in meeting a future year requirement, which would avoid the need to define the term "independent solar electric generator" and would conform this section to accommodate the addition of environmentally friendly technologies that were incorporated into the revised rule.

APS argued that the term "independent solar generator" should be deleted from the rule because the term has no meaning within the context of the rule. APS claimed that solar generators that fall within the scope of being a "Load-Serving Entity" would already be covered by Staff's proposed amendment. Solar generators that are not within that definition have no EPS portfolio requirement and thus no "excess" solar kWh. If these generators are selling their generation to a "Load-Serving Entity," APS argued, it is the latter that should receive credit. APS argued that allowing the generator to also receive credits creates an unnecessary risk of double-counting the solar generation in question.

Staff agreed in concept with NWE and stated it was the intent of the rule. The Environmental Group agreed with NWE that the issue of banking of energy and credits should be clarified. The Environmental Group believed it was unclear whether the current wording would permit an independent solar electric generator to sell "excess" solar kWh in the current year. The Environmental Group suggested inserting the words "current and" before "future years". However, nether NWE nor Staff have specific suggestions for wording changes to the rule.

**Analysis:** APS's analysis appears correct. "Independent solar electric generators" that are not Load Serving Entities are not covered by the rule and do not have an ESP portfolio requirement. When independent solar electric generators, or other electric generator using renewable sources sells electricity to a Load Serving Entity, it is the latter that should receive the credits, as it is only the latter that has use for the credits.

In addition, it is not just "solar" kWh's that result in credits, but rather kWh that are produced by other renewable sources such as in-state landfill gas, biomass and wind.

**Resolution:** Delete the term "or independent solar electric generator" from section 1618.I. Delete "solar" where it appears before "kWh" and insert "eligible" before "kWh" where it appears the first time in the first sentence of section 1618.I.

**1618.D.1**

**Issue:** AEPCO believed that it is unclear whether all early extra credit multipliers end in 2003 or continue beyond that year for five years after installation. AEPCO believes the intent was the latter and suggested deleting the sentence "The Early Installation Extra Credit Multiplier would end in 2003."

Staff suggested that instead of deleting the sentence, it should be modified to read "The eligibility to qualify for the early Installation Extra Credit Multiplier would end in 2003. However, any eligible system that was operational in 2003 or before would still be allowed the applicable extra credit for the full five years after operational start-up." Staff also recommended that a clarifying sentence be added to the beginning of section 1618.D as follows: "Electric Service Providers shall be eligible for a number of extra credit multipliers that may be used to meet the portfolio standard requirements: Extra credits may be used to meet portfolio requirements and extra credits from solar electric technologies will also count toward the solar electric fraction required in R14-2-1618.B.3 With the exception of the Early Installation Extra Credit Multiplier, which has a five-year life from operational system start-up, all other extra credit multipliers are valid for the life of the generating equipment."

**Analysis:** Staff's suggested modifications are reasonable and most clearly enunciate the intent of the rule.

**Resolution:** Modify 1618.D as proposed by Staff, however, reference should be made to Load-Serving Entities rather than ESPs.

**R14-2-1618.F**

**Issue:** Staff noted that section 1618.F refers to the imposition of a "penalty" and that later in the same section this payment is correctly referred to as a "deficiency payment". Staff clarified that rather than being a "penalty" this payment is a requirement for the Load-Serving Entity to meet its obligations under the Portfolio Standard in another manner. If the Load-Serving Entity fails to meet its obligation to produce electricity from clean sources under the portfolio, the "deficiency payment" will be used to meet the Load-Serving Entity's obligation. Therefor, Staff recommended that the references in section 1618.F to "penalty" should be changed to "deficiency payment".

TEP is not in favor of imposing penalties or deficiency payments for non-compliance, but did support Staff's recommendation to change the terminology from "penalty" to "deficiency payment". TEP noted that because the imposition of deficiency payments is contingent on subsequent Commission action on the Environmental Portfolio Cost Evaluation Working Group's recommendations, TEP reserved further comment on the deficiency payments until that time, if necessary.

**Analysis:** Staff's proposed modification eliminates potential ambiguity and confusion and should be adopted.

**Resolution**: Modify section 1618.F as discussed above.

**R14-2-1618.I**

**Issue:** Scottsdale argued that the portfolio surcharge should replace the utility premium charge for "green power". Scottsdale noted that utilities currently allow customers to elect to use electricity generated from renewable source for a premium that amounts to considerably more than the 35 cents per month cap specified in the portfolio standard. For example, the City of Scottsdale is a solar partner with APS and the City pays a premium to have solar generation at some of its facilities, for which it will pay a premium of approximately $7,000 per year. Scottsdale believed it could invest in the same amount in city-owned solar generation and break even in 4 to 5 years. Therefore, it is the City's position that the existing program for Green Power should be eliminated.

TEP opposed Scottsdale recommendation that municipalities and citizens who install solar electric systems be exempt from paying the surcharge, and that green power programs be abolished. TEP argued that because all Arizona residents will benefit from developing renewable resources, all should contribute to funding the development of renewable resources. TEP noted that citizens who install solar electric systems stand to gain financially from the sale of renewable credits to electric service providers, and should not be exempt from the surcharge. TEP argued that all "green power" programs in Arizona are voluntary and allow the customer to decide if he wants to contribute a premium for development of renewable energy resources.

Staff also disagreed with Scottsdale and argued that the portfolio surcharge and "green power" charge are two entirely different mechanisms that have similar goals. The Portfolio Surcharge is a mandatory charge for all customers that is used to develop renewable electricity. The utility "green power" programs are entirely voluntary and allow customers to voluntarily pay a premium for renewable power.

**Analysis:** Because the "green power" programs are entirely voluntary there is no need to eliminate them. Customers who care about the environment, and can afford to pay a premium for renewable power, are able to do more by participating in the "green power" programs. There is a public benefit in continuing the programs while still requiring the payment of the surcharge. Scottsdale and other similarly situated entities should perform their won cost/ benefit analyses of how best to meet their own goals of utilizing "green" energy.

**Resolution:** No change required.

**Issue**: Scottsdale advocated that the Commission consider adopting a provision to encourage development of renewable generation by forgiving the surcharge to those who install renewable generation. The City believed that under such a plan, it could afford to invest $20,000 each year in solar photo voltaic or other renewable generation equipment installed on City facilities in lieu of the surcharge, with the result of increasing the base of renewable generation. Scottsdale advocated that because the utility would forfeit the benefit of the surcharge, it should be allowed to count the City's solar generation against the utility's portfolio requirement.

Staff disagreed with Scottsdale, claiming that those customers who install their own renewable generation will automatically pay less of a Portfolio Surcharge because they will be purchasing fewer kWhs from their electric provider.

**Analysis**: We concur with Staff. If Scottsdale, or another electric user is able to install renewable generation, they will be able to reap the benefits of the power produced and will be able to reduce their consumption of electricity from other sources.

**Resolution**: No changed required.